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MACROECONOMIC POLICY QUESTIONS

Letter dated 23 February 1995 from the Chargé d'affaires a.i. of the Permanent Mission of Paraguay to the United Nations addressed to the Secretary-General

I have the honour to write to you in Paraguay's capacity as current President of the Common Market of the Southern Cone (MERCOSUR).

As you know, the Treaty of Asunción dated 26 March 1991 and signed by Argentina, Brazil, Paraguay and Uruguay, gave rise to MERCOSUR.

On 17 December 1994, the Additional Protocol to the Treaty of Asunción was signed. That document, which establishes the institutional structure of MERCOSUR and is also known as the Ouro Preto Protocol, is attached hereto.

I should be grateful if you would have this document distributed to all the Member States as a document of the General Assembly under item 96 of the preliminary list.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) Mario SANDOVAL
Minister
Chargé d'affaires a.i.

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ANNEX

Additional Protocol to the Treaty of Asunción concerning the institutional structure of MERCOSUR

- Ouro Preto Protocol -

The Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, hereinafter referred to as the "State Parties",

Pursuant to the provisions of article 18 of the Treaty of Asunción of 26 March 1991,

Realizing the importance of the progress made and of the launching of the customs union as a stage in the creation of the common market,

Reaffirming the principles and objectives of the Treaty of Asunción and attentive to the need for special consideration to be given to countries and regions that are less developed than MERCOSUR,

Aware of the momentum implicit in any integration process and the consequent need to adapt the institutional structure of MERCOSUR to the changes that have occurred,

Recognizing the remarkable work done by the existing organs during the transition period,

Agree as follows:

## Chapter I

## Structure of MERCOSUR

### Article 1

The institutional structure of MERCOSUR shall comprise the following organs:

I. The Council of the Common Market (CMC)

II. The Common Market Group (GMC)

III. The MERCOSUR Trade Commission (CCM)

IV. The Joint Parliamentary Commission (CPC)

V. The Economic and Social Consultative Forum (FCES)

VI. The Administrative Secretariat of MERCOSUR (SAM).

Sole paragraph. Under the terms of this Protocol, such auxiliary organs shall be created as may be necessary to achieve the objectives of the integration process.

Article 2

The following shall be intergovernmental organs with decision-making powers: the Council of the Common Market, the Common Market Group and the MERCOSUR Trade Commission.

Section I

The Council of the Common Market

Article 3

The Council of the Common Market shall be the highest organ of MERCOSUR and shall be responsible for the political leadership of the integration process and for taking decisions to ensure compliance with the objectives set by the Treaty of Asunción and to secure the final establishment of the common market.

Article 4

The Council of the Common Market shall consist of the Ministers for Foreign Affairs and the Ministers of the Economy, or their equivalent, of the States Parties.

Article 5

The presidency of the Council of the Common Market shall rotate among the States Parties, in alphabetical order, for periods of six months.

Article 6

The Council of the Common Market shall meet whenever it deems necessary, and at least once every six months with the participation of the Presidents of the States Parties.

Article 7

Meetings of the Council of the Common Market shall be coordinated by the Ministers for Foreign Affairs, and other ministers or ministerial authorities may be invited to participate in them.

Article 8

The functions and powers of the Council of the Common Market shall be:

I. To monitor compliance with the Treaty of Asunción, its Protocols and any agreements signed thereunder;

II. To formulate policies and promote action needed to establish the common market;

III. To exercise the legal personality of MERCOSUR;

IV. To negotiate and sign agreements, on behalf of MERCOSUR, with third countries, groups of countries and international agencies. These functions may be delegated expressly to the Common Market Group on the terms established in paragraph VII of article 14;

V. To take action on proposals transmitted to it by the Common Market Group;

VI. To organize meetings of ministers and take action on any agreements they may submit to it;

VII. To create whatever organs it deems appropriate, as well as modify or dissolve them;

VIII. To clarify, where necessary, the content and scope of its decisions;

IX. To appoint the Director of the Administrative Secretariat of MERCOSUR;

X. To take financial and budgetary decisions;

XI. To approve the rules of procedure of the Common Market Group.

Article 9

The Council of the Common Market shall take action by means of decisions which shall be binding on the States Parties.

Section II

The Common Market Group

Article 10

The Common Market Group shall be the executive organ of MERCOSUR.

Article 11

The Common Market Group shall consist of four members and four alternate members for each country appointed by their respective Governments; such members must include representatives of the country's Ministry of Foreign Affairs, Ministry of the Economy (or equivalent) and Central Bank. The Common Market Group shall be coordinated by the Ministries of Foreign Affairs.

Article 12

In drafting and proposing specific measures in the course of its work, the Common Market Group may, whenever it deems appropriate, call on representatives of other government organs or of the institutional structure of MERCOSUR.

Article 13

The Common Market Group shall convene regular or special meetings as often as is necessary, on the terms established in its rules of procedure.

Article 14

The functions and powers of the Common Market Group shall be:

I. To monitor, within the limits of its jurisdiction, compliance with the Treaty of Asunción, its Protocols and any agreements signed thereunder;

II. To propose draft decisions to the Council of the Common Market;

III. To take the necessary steps to comply with decisions adopted by the Council of Common Market;

IV. To draw up programmes of work which ensure progress towards the establishment of the common market;

V. To create, modify or dissolve organs such as working subgroups and specialized meetings in order to fulfil its objectives;

VI. To express its views on any proposals or recommendations submitted to it by the other organs of MERCOSUR within its sphere of competence;

VII. To negotiate on behalf of MERCOSUR, with the participation of representatives of all the State Parties and when expressly delegated to do so by the Council of the Common Market, within the limits set by specific mandates granted to this end, agreements with third countries, groups of countries and international agencies. When so mandated, it shall sign the aforementioned agreements. When authorized by the Council of the Common Market, it may delegate the aforementioned powers to the MERCOSUR Trade Commission;

VIII. To approve the budget and the annual financial report presented by the Administrative Secretariat of MERCOSUR;

IX. To adopt financial and budgetary decisions, based on the guidelines issued by the Council;

X. To submit its rules of procedures to the Council of the Common Market;

XI. To organize the meetings of the Council of the Common Market and prepare any reports and studies that the Council may request of it;

XII. To elect the Director of the Administrative Secretariat of MERCOSUR;

XIII. To supervise the activities of the Administrative Secretariat of MERCOSUR;

XIV. To approve the rules of procedure of the Trade Commission and the Economic and Social Consultative Forum.

Article 15

The Common Market Group shall take action by means of resolutions which shall be binding on the States Parties.

Section III

The MERCOSUR Trade Commission

Article 16

The MERCOSUR Trade Commission, the organ responsible for assisting the Common Market Group, shall be responsible for monitoring the application of the instruments of common trade policy agreed on by the States Parties for the functioning of the customs union, and for following up and reviewing issues and matters related to common trade policies, intra-MERCOSUR trade and third countries.

Article 17

The MERCOSUR Trade Commission shall consist of four members and four alternate members for each State Party and shall be coordinated by the Ministries of Foreign Affairs.

Article 18

The MERCOSUR Trade Commission shall meet at least once a month or whenever requested by the Common Market Group or by any of the States Parties.

Article 19

The functions and powers of the MERCOSUR Trade Commission shall be:

I. To monitor the application of common instruments of trade policy within MERCOSUR and with third countries and international agencies, and trade agreements;

II. To consider and take action on requests submitted by States Parties with regard to the application and enforcement of the common external tariff and other instruments of common trade policy;

III. To follow up the application of instruments of common trade policy in the States Parties;

IV. To analyse the evolution of instruments of common trade policy for the functioning of the customs union and make proposals thereon to the Common Market Group;

V. To take decisions concerning the administration and application of the common external tariff and of the instruments of common trade policy agreed to by the States Parties;

VI. To inform the Common Market Group of the evolution and application of instruments of common trade policy, the processing of the requests received and the decisions taken thereon;

VII. To propose to the Common Market Group new rules or amendments to existing MERCOSUR rules in the trade and customs areas;

VIII. To propose revisions of the tariff quotas for specific items of the common external tariff, including in the case of new productive activities in the sphere of MERCOSUR;

IX. To set up whatever technical committees it needs to perform its functions properly, and to direct and supervise their activities;

X. To perform such tasks related to common trade policy as the Common Market Group may request of it;

XI. To adopt its rules of procedure, which it shall submit to the Common Market Group for approval.

Article 20

The MERCOSUR Trade Commission shall take action by means of directives or proposals. Its directives shall be binding on the States Parties.

Article 21

In addition to the functions and powers laid down in articles 16 and 19 of this Protocol, the MERCOSUR Trade Commission shall be responsible for considering complaints filed by national sections of the MERCOSUR Trade Commission, whether emanating from the States Parties or from complaints by private individuals or legal entities, concerning the situations envisaged in articles 1 or 25 of the Brasilia Protocol, where these fall within its sphere of competence.

First paragraph. Consideration of the aforementioned complaints by the MERCOSUR Trade Commission shall not preclude action by the State Party which made the complaint, by virtue of the Brasilia Protocol for the Settlement of Disputes.

Second paragraph. Complaints arising from the cases provided for in this article shall be handled in accordance with the procedure laid down in the annex to this Protocol.

Section IV

The Joint Parliamentary Commission

Article 22

The Joint Parliamentary Commission shall be the representative organ of the Parliaments of the States Parties within MERCOSUR.

Article 23

The Joint Parliamentary Commission shall consist of an equal number of parliamentarians representing each of the States Parties.

Article 24

Members of the Joint Parliamentary Commission shall be appointed by their respective national Parliaments, according to their own internal procedures.

Article 25

The Joint Parliamentary Commission shall seek to expedite the corresponding internal procedures in the States Parties for the early entry into force of rules issued by the MERCOSUR organs provided for in article 2 of this Protocol. It shall likewise assist in the harmonization of legislation, as required by the progress of the integration process. Where necessary, the Council shall request the Joint Parliamentary Commission to consider priority issues.

Article 26

The Joint Parliamentary Commission shall transmit recommendations to the Council of the Common Market through the Common Market Group.

Article 27

The Joint Parliamentary Commission shall adopt its rules of procedure.

Section V

The Economic and Social Consultative Forum

Article 28

The Economic and Social Consultative Forum shall be the representative organ of the economic and social sectors and shall consist of an equal number of representatives from each State Party.

Article 29

The Economic and Social Consultative Forum shall perform an advisory function and shall take action by means of recommendations to the Common Market Group.

Article 30

The Economic and Social Consultative Forum shall submit its rules of procedure to the Common Market Group for approval.

Section VI

The Administrative Secretariat of MERCOSUR

Article 31

MERCOSUR shall have an Administrative Secretariat as its operational support organ. The MERCOSUR Administrative Secretariat shall be responsible for servicing the other organs of MERCOSUR and shall have its permanent headquarters in the city of Montevideo.

Article 32

The Administrative Headquarters of MERCOSUR shall carry out the following activities:

I. Serve as the official archive for MERCOSUR documentation;

II. Publish and disseminate rules adopted within the framework of MERCOSUR. In this context, it shall:

(i) In coordination with the States Parties, make authentic translations in the Spanish and Portuguese languages of all decisions adopted by the organs of the institutional structure of MERCOSUR, as provided for in article 39;

(ii) Publish the Official Bulletin of MERCOSUR;

III. Organize the logistical aspects of meetings of the Council of the Common Market, the Common Market Group and the MERCOSUR Trade Commission and, to the extent possible, of the other organs of MERCOSUR when these are held at its permanent headquarters. Where meetings are held away from its permanent headquarters, the Administrative Secretariat of MERCOSUR shall provide support to the State where the meeting is being held;

IV. Report regularly to the States Parties on the measures taken by each country to incorporate into its domestic legislation rules issued by the organs of MERCOSUR provided for in article 2 of this Protocol;

V. Register national lists of arbitrators and experts and perform other tasks laid down by the Brasilia Protocol of 17 December 1991;

VI. Perform any tasks requested of it by the Council of the Common Market, the Common Market Group and the MERCOSUR Trade Commission;

VII. Draft its budget proposal and, once this has been approved by the Common Market Group, take whatever action is required to implement it correctly;

VIII. Present its financial report annually to the Common Market Group, as well as an activities report.

Article 33

The Administrative Secretariat of MERCOSUR shall be headed by a Director who shall be a national of one of the States Parties. He shall be elected by the Common Market Group, on the basis of rotation and after consulting the States Parties, and shall be appointed by the Council of the Common Market. His mandate shall be for two years and he shall not be eligible for reelection.

Chapter II

Legal personality

Article 34

MERCOSUR shall have legal personality under international law.

Article 35

MERCOSUR may, in exercise of its powers, take whatever action is necessary to achieve its objectives, in particular, recruit staff, buy and sell movable and immovable property, appear in court, and maintain and transfer funds.

Article 36

MERCOSUR shall conclude headquarters agreements.

Chapter III

Decision-making system

Article 37

The organs of MERCOSUR shall take decisions by consensus and with all the States Parties present.

Chapter IV

Internal application of rules issued by the organs of MERCOSUR

Article 38

The States Parties undertake to adopt all necessary measures to ensure, in their respective territories, compliance with rules issued by the organs of MERCOSUR provided for in article 2 of this Protocol.

Sole paragraph. The States Parties shall inform the Administrative Secretariat of MERCOSUR of the measures taken to this end.

Article 39

The content of decisions of the Council of the Common Market, resolutions of the Common Market Group, directives of the MERCOSUR Trade Commission and arbitral awards for the settlement of disputes, as well as any document which the Council of the Common Market considers it necessary to publish officially, shall be published in full, in the Spanish and Portuguese languages, in the Official Bulletin of MERCOSUR.

Article 40

In order to guarantee the simultaneous entry into force in the States Parties of rules issued by the organs of MERCOSUR provided for in article 2 of this Protocol, the following procedure shall be followed:

(i) Once the rule has been adopted, the States Parties shall take the necessary measures to incorporate it into their domestic legislation and shall notify the Administrative Secretariat of MERCOSUR of those measures;

(ii) When all the States Parties have informed it that they have incorporated the rule into their domestic legislation, the Administrative Secretariat of MERCOSUR shall notify each State Party accordingly;

(iii) Such rules shall enter into force simultaneously in the States Parties 30 days after the date of the notification given by the Administrative Secretariat of MERCOSUR in accordance with the preceding subparagraph. To that end, the States Parties shall, within the 30-day period, give notice of the entry into force of the rules in question through their respective official gazettes.

Chapter V

Legal sources of MERCOSUR

Article 41

The legal sources of MERCOSUR shall be:

I. The Treaty of Asunción, its Protocols and any additional or supplementary instruments;

II. Agreements concluded within the framework of the Treaty of Asunción and its Protocols;

III. Decisions of the Council of the Common Market, resolutions of the Common Market Group and directives of the MERCOSUR Trade Commission adopted since the entry into force of the Treaty of Asunción.

Article 42

Rules issued by the organs of MERCOSUR provided for in article 2 of this Protocol shall be binding and, where necessary, shall be incorporated into domestic legislation by means of the procedures laid down by the law of each country.

## Chapter VI

## System for the settlement of disputes

### Article 43

Any disputes arising among the States Parties concerning the interpretation, application or violation of the provisions of the Treaty of Asunción, or of agreements concluded thereunder and decisions of the Council of the Common Market, resolutions of the Common Market Group and directives of the MERCOSUR Trade Commission, shall be submitted to the dispute settlement procedures established in the Brasilia Protocol of 17 December 1991.

Sole paragraph. Directives of the MERCOSUR Trade Commission shall also be incorporated into articles 19 and 25 of the Brasilia Protocol.

### Article 44

Before the process of convergence of the Common External Tariff is complete, the States Parties shall revise the current disputes settlement system of MERCOSUR with a view to adopting the permanent system referred to in paragraph 3 of annex III to the Treaty of Asunción and in article 34 of the Brasilia Protocol.

## Chapter VII

## Budget

### Article 45

The Administrative Secretariat of MERCOSUR shall have a budget with which to pay its operating expenses and those mandated by the Common Market Group. That budget shall be financed in equal proportions by contributions from the States Parties.

## Chapter VIII

## Languages

### Article 46

The official languages of MERCOSUR shall be Spanish and Portuguese. The official version of its working documents shall be that drafted in the language of the country in which each meeting takes place.

Chapter IX

Revisicn

Article 47

The States Parties shall, whenever they deem appropriate, convene a diplomatic conference to revise the institutional structure of MERCOSUR established by this Protocol, as well as the specific powers of each of its organs.

Chapter X

Period of application

Article 48

This Protocol, which forms an integral part of the Treaty of Asunción, shall be of unlimited duration and shall enter into force 30 days after the date of deposit of the third instrument of ratification. This Protocol and its instruments of ratification shall be deposited with the Government of the Republic of Paraguay.

Article 49

The Government of the Republic of Paraguay shall notify the Governments of the other States Parties of the date of deposit of the instruments of ratification and the date of entry into force of this Protocol.

Article 50

In matters of accession or denunciation, the rules laid down by the Treaty of Asunción shall apply collectively to this Protocol. Accession to or denunciation of the Treaty of Asunción or this Protocol shall signify, ipso jure, accession to or denunciation of this Protocol and the Treaty of Asunción.

Chapter XI

Transitional provision

Article 51

The institutional structure provided for in the Treaty of Asunción of 26 March 1991, and the organs created by it, shall be maintained until the entry into force of this Protocol.

## Chapter XII

## General provisions

### Article 52

This Protocol shall be known as the "Ouro Preto Protocol".

### Article 53

All provisions of the Treaty of Asunción of 26 March 1991 that conflict with the terms of this Protocol and with the content of decisions adopted by the Council of the Common Market during the transition period are hereby repealed.

Done at the city of Ouro Preto, Federative Republic of Brazil, on 17 December 1994, in one original in the Spanish and Portuguese languages, both versions being equally authentic. The Government of the Republic of Paraguay shall send a duly authenticated copy of this Protocol to the Governments of the other States Parties.

For the Argentine Republic:

Carlos Saul Menem — Guido Di Tella

For the Federative Republic of Brazil:

Itamar Franco — Celso L.N. Amorim

For the Republic of Paraguay:

Juan Carlos Wasmosy — Luis María Ramírez Bostner

For the Eastern Republic of Uruguay:

Luis Alberto Lacalle Herrera — Sergio Abreu

ANNEX TO THE OURO PRETO PROTOCOL

GENERAL PROCEDURE FOR HANDLING COMPLAINTS TO THE MERCOSUR TRADE COMMISSION

Article 1

Complaints filed by national sections of the MERCOSUR Trade Commission, whether emanating from the States Parties or from private individuals or legal entities in accordance with article 21 of the Ouro Preto Protocol, shall conform to the procedure established in this annex.

Article 2

The State Party making the complaint shall file it with the current presidency of the MERCOSUR Trade Commission, which shall take the necessary steps to have the issue included in the agenda of the first meeting of the MERCOSUR Trade Commission to be held after its receipt, subject to at least one week's notice. If no decision is taken at that meeting, the MERCOSUR Trade Commission shall refer the case, without further proceedings, to a technical committee.

Article 3

The technical committee shall prepare a joint ruling on the matter and transmit it to the MERCOSUR Trade Commission within a maximum period of thirty (30) consecutive days. Such ruling or, in its absence, the findings of the expert members of the technical committee shall be taken into consideration by the MERCOSUR Trade Commission when it takes a decision on the complaint.

Article 4

The MERCOSUR Trade Commission shall take a decision on the matter at its first regular meeting to be held following receipt of the joint ruling or, in its absence, of the experts' findings. A special meeting may also be convened for this purpose.

Article 5

If no consensus is reached at the first meeting referred to in article 4, the MERCOSUR Trade Commission shall transmit to the Common Market Group the various alternatives proposed, as well as the joint ruling or expert findings of the technical committee, so that a decision can be taken on the matter. The Common Market Group shall rule on the matter within a period of thirty (30) consecutive days from the date of receipt, by the current presidency, of the proposals transmitted by the MERCOSUR Trade Commission.

Article 6

If a consensus is reached that the complaint is admissible, the State Party against which the complaint is made shall take the measures approved in the MERCOSUR Trade Commission or the Common Market Group. In each case, the MERCOSUR Trade Commission or, subsequently, the Common Market Group shall set a reasonable deadline for the implementation of those measures. If the deadline passes and the State has not complied with the decision taken by either the MERCOSUR Trade Commission or the Common Market Group, the complainant State may resort directly to the procedure provided for in chapter IV of the Brasilia Protocol.

Article 7

If no consensus is reached in the MERCOSUR Trade Commission and subsequently in the Common Market Group, or if the State against which the complaint is made does not comply with their decision within the deadline provided for in article 6, the complainant State may resort directly to the procedure established in chapter IV of the Brasilia Protocol, and the Administrative Secretariat of MERCOSUR shall be notified accordingly.

The arbitral tribunal shall, before making its arbitral award and within fifteen (15) consecutive days from the date of its establishment, decide on such provisional measures as it may deem appropriate, on the terms set forth in article 18 of the Brasilia Protocol.

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